

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2002-387-C - ORDER NO. 2003-532

SEPTEMBER 22, 2003

IN RE: Application of Yak Communications)	ORDER GRANTING
(America), Inc. for a Certificate of Public)	CERTIFICATE FOR
Convenience and Necessity to Provide Resold)	INTEREXCHANGE
Interexchange Telecommunications Services)	AUTHORITY AND
in the State of South Carolina and for)	MODIFIED
Alternative Regulation.)	ALTERNATIVE
)	REGULATION

This matter comes before the Public Service Commission of South Carolina (the "Commission") by way of the Application of Yak Communications (America), Inc. ("Yak" or the "Company") requesting a Certificate of Public Convenience and Necessity authorizing it to operate as a reseller of interexchange telecommunications services within the State of South Carolina. The Company's Application was filed pursuant to S.C. Code Ann. §58-9-280 (Supp. 2002) and the general regulatory authority of the Commission. By its Application, Yak also requested alternative regulation of its business services offerings identical to that granted to AT&T Communications in Order Nos. 95-1734 and 96-55 in Docket No. 95-661-C and requested waiver of certain Commission regulations.

The Commission's Executive Director instructed Yak to publish, one time, a Notice of Filing in newspapers of general circulation in the areas of the state affected by the Application. The purpose of the Notice of Filing was to inform interested parties of the Application of Yak and of the manner and time in which to file the appropriate

pleadings for participation in the proceeding. Yak complied with this instruction and provided the Commission with proof of publication of the Notice of Filing. No Petitions to Intervene or Protests were filed.

A hearing was convened on July 23, 2003, at 10:30 a.m. in the Commission's Hearing Room, Columbia, South Carolina. The Honorable Mignon Clyburn, Chairman, presided. Yak was represented by John J. Pringle, Esquire. Jocelyn G. Boyd, Staff Counsel, represented the Commission Staff.

Robin Clarke, Executive Administrator of the Company, appeared and testified in support of the Application. Ms. Clarke is responsible for oversight of all general operations. She has several years of management experience in the telecommunications industry. Prior to joining Yak, Ms. Clarke managed several major telecommunications projects, including the establishment of a new "One Plus" department, the creation of a telecommunications customer billing program, and the installation of Automated Banking Machines in the white label marketplace. Ms. Clarke also served as a customer service representative for a telecommunications service reseller.

Ms. Clarke presented evidence describing the technical, managerial and financial fitness of the Company to provide resold interexchange services in South Carolina. Yak received foreign corporation authority in South Carolina on October 17, 2002. The Company is seeking authorization to provide interexchange services on a resold basis throughout the State of South Carolina. Specifically, Yak intends to offer a full array of interLATA and intraLATA interexchange telecommunications services to business and residential customers, including services such as basic "1+" long distance services,

otherwise known as Message Telecommunications Service (“MTS”), 10-10 casual calling services and toll-free services. According to the testimony, when Yak is authorized to provide telecommunications services in South Carolina, the Company will not immediately offer prepaid debit cards in South Carolina. The testimony reveals that Yak is familiar with the Commission’s requirement that a \$5,000 bond or certificate of deposit be posted with the Commission prior to the Company offering debit card services.

According to the testimony, Yak is a well-established Company, and has been a thriving provider of long distance services in Canada since 1999, under the same management team that guides the Company today. Yak Communications (America), Inc. is a corporation organized under the laws of the State of Florida on March 8, 2001. Yak is headquartered at 55 Town Centre Court, Suite 610, Scarborough, Ontario, Canada M1P 4X4. The telephone number for Yak’s corporate headquarters is (416) 296-7111. Yak Communications (America), Inc. is a direct wholly-owned subsidiary of Yak Communications (USA) Inc. Yak Communications (USA) Inc. is a Florida corporation formed on December 24, 1998, and is headquartered at 55 Town Centre Court, Suite 610, Scarborough, Ontario, Canada M1P 4X4. Through its other wholly-owned subsidiary, Yak Communications (Canada) Inc., Yak Communications (USA) Inc. provides international long distance discount services to business and residential customers in Canada, primarily by use of a 10-10-access platform. Yak Communications (Canada) Inc. is a Florida corporation formed on October 15, 1998, and is headquartered at 55 Town Centre Court, Suite 610, Scarborough, Ontario, Canada M1P 4X4. Yak Communications (Canada) Inc. is authorized to provide facilities-based and resold

services throughout Canada by a Class B License, effective April 16, 1999, and began its telecommunications operations in Canada in June, 1999.

The testimony reveals that Yak intends to resell the interexchange telecommunications services of eMeritus Communications, Inc. However, Yak may in the future resell the interexchange telecommunications services of other carriers certificated by the Commission.

Regarding the Company's billing services, Yak's customers will be billed by Billing Concepts, Inc., a third party billing service employed by the Company. All charges for long distance telecommunications services payable to Yak will appear on the monthly bill issued by the customers' local telecommunications service provider. For billing inquiries, customers may utilize the toll-free number for Billing Concepts, Inc. ((800) 460-0556), which shall appear on each monthly bill. All customer inquiries received at this toll-free number, with regard to charges billed by Yak, will be automatically routed to Yak's Call Centre as the Company intends that such inquiries be handled by its own customer service personnel. According to the testimony, the Company will ensure that all bills are in compliance with the Commission's rules and regulations. Ms. Clarke testified that Yak's bills will comply in all respects with Commission Regulation 103-622.1, and the Company will provide a copy of its customer bill to the Commission as required by Commission Regulation 103-612.2.2.

Yak uses a nationwide toll-free number, (866) 925-2355, for customer services. The Call Centre is staffed from 7 a.m. until 1 a.m., Monday through Friday, and from 9

a.m. until 9 p.m., Saturday and Sunday. Customers may also present their questions, complaints, and concerns to Yak in writing.

The Company is authorized to provide telecommunications services in Arizona, California, Florida, Illinois, Maryland, Nevada, New Hampshire, New Jersey, New Mexico, New York, Oregon, Pennsylvania, Texas, Vermont and Washington State. Yak is also providing service on an unregulated basis in Virginia and Utah, consistent with those states' laws applicable to interexchange resellers.

The testimony reveals that Yak does not intend to operate, control or manage any telecommunications transmission facilities within the State of South Carolina and does not intend to obtain or construct any such facilities or equipment. However, the Company reserves the right to install its own facilities if and when business conditions warrant, and upon approval by the Commission. Additionally, the Company does not intend to have offices in South Carolina. Therefore, Yak requests that, pursuant to Commission Regulation 103-610, that the Commission allow it to keep all applicable books and records at its offices in Ontario. Ms. Clarke testified that should the Commission or the Commission Staff desire to inspect such books and records, Yak will provide the books expeditiously and at its own expense.

Regarding the Company's financial resources, Ms. Clarke testified that the Company is adequately funded for continuous operations. Yak has access to ample capital to fund its obligations associated with providing interexchange services within the State of South Carolina. Yak submitted financial statements to the Commission as Exhibit D to the Application. Yak uses Generally Accepted Accounting Principles

(GAAP). To the extent that the Rules of the Commission require the use of the Uniform System of Accounts (USOA), the Company requests a waiver in order that GAAP be allowed.

The record includes biographical sketches of the management team of Yak. Charles Zwebner is the Founder, President, and Chief Executive Officer of Yak. Prior to founding Yak Communications (America) Inc. in 1998, Mr. Zwebner served as the President of CardCaller Canada Inc. (CardCaller), and as a member of CardCaller's Board of Directors, for six years. Mr. Zwebner founded CardCaller in 1992, and remained significantly involved in the corporation's design, development, production, and manufacture of the first Canadian fixed amount prepaid multilingual telephone calling card. Prior to founding CardCaller, Mr. Zwebner serviced as Vice President of the Mortgage Department of Concinnity Corporation, Inc. from 1987 – 1992, where he handled underwriting, management, and syndication of residential and commercial mortgage portfolios. Mr. Zwebner holds a B.A. in Computer Science and Business Administration from York University. Ms. Margaret Noble is the Company's Controller. Since her accreditation as Certified Management Accountant in 1985, Ms. Noble has held various accounting and strategic planning positions in the high technology, entertainment, and telecommunications industries. In particular, Ms. Noble worked to implement accounting systems and procedures for Dome Productions and Magnetic North prior to joining Yak Communications (America) Inc. Other members of Yak's management team are as follows: Jacquie Capote, Switch and Network

Engineering; Andrew Boone, Call Centre Manager; and Taras Kapanaike, Chief Technical Officer.

Yak requests that the Commission regulate its long distance business services, consumer card, and operator service offerings in accordance with the principles and procedures established for alternative regulation in Orders Nos. 1995-1734 and 1996-55, as modified by Order No. 2001-997-C which was approved for AT&T and other similarly situated companies. The testimony reveals that Yak requests that the Commission grant the following relief, in regards to alternative regulation: 1. that the Commission remove the maximum rate tariff requirements for Yak's business services and future private line, and customer network-type offerings; 2. presume that Yak's tariff filings for these services be valid upon filing; however, if the Commission institutes an investigation of a particular filing within seven (7) days, the tariff filing will be suspended until further Order of the Commission; and 3. grant Yak the same treatment as AT&T in connection with any future relaxation of the Commission's reporting requirements.

After full consideration of the applicable law, the Company's Application, and the evidence presented at the hearing, the Commission hereby issues its findings of fact and conclusions of law:

FINDINGS OF FACT

1. Yak is organized as a corporation under the laws of the State of Florida and is authorized to do business as a foreign corporation in the State of South Carolina by the Secretary of State.

2. Yak operates as a non-facilities based reseller of interexchange services and wishes to provide its services in South Carolina.

3. Yak has the experience, capability, and financial resources to provide the services as described in its Application.

CONCLUSIONS OF LAW

1. Based on the above findings of fact, the Commission determines that a Certificate of Public Convenience and Necessity should be granted to Yak to provide intrastate interLATA service and to originate and terminate toll traffic within the same LATA, as set forth herein, through the resale of intrastate Wide Area Telecommunications Services (WATS), Message Telecommunications Service (MTS), Foreign Exchange Service, Private Line Service, or any other services authorized for resale by tariffs of carriers approved by the Commission.

2. The Commission adopts a rate design for Yak for its resale of residential services which includes only maximum rate levels for each tariff charge. A rate structure incorporating maximum rate levels with the flexibility for adjustment below the maximum rate levels has been previously adopted by the Commission. In Re: Application of GTE Sprint Communications Corporation, etc., Order No. 84-622, issued in Docket No. 84-10-C (August 2, 1984).

3. Yak shall not adjust its residential rates below the approved maximum level without notice to the Commission and to the public. Yak shall file its proposed rate changes, publish its notice of such changes, and file affidavits of publication with the Commission two weeks prior to the effective date of the changes. However, the public

notice requirement is waived, and therefore not required, for reductions below the maximum cap in instances which do not affect the general body of subscribers or do not constitute a general rate reduction. In Re: Application of GTE Sprint Communications, etc., Order No. 93-638, issued in Docket No. 84-10-C (July 16, 1993). Any proposed increase in the maximum rate level for residential services reflected in the tariff which would be applicable to the general body of the Company's subscribers shall constitute a general ratemaking proceeding and will be treated in accordance with the notice and hearing provisions of S.C. Code Ann. §58-9-540 (Supp. 2002).

4. With respect to Yak's business services, consumer card, and operator service offerings, the Commission adopts a relaxed regulatory scheme identical to that granted to AT&T Communications in Order Nos. 95-1734 and 96-55 in Docket No. 95-661-C. Under this relaxed regulatory scheme, tariff filings for business services shall be presumed valid upon filing. The Commission will have seven (7) days in which to institute an investigation of any tariff filing. If the Commission institutes an investigation of a particular tariff filing within the seven days, the tariff filing will then be suspended until further Order of the Commission. Any relaxation in the future reporting requirements that may be adopted for AT&T shall apply to Yak also. These alternative regulation orders were modified by Order No. 2001-997 in Docket No. 2000-407-C which imposed a cap on operator-assisted calls where a consumer uses a local exchange carrier's calling card to complete calls from locations which have not selected the local exchange carrier as their toll provider. The provisions of this Order and this modification also apply to Yak.

5. If it has not already done so by the date of issuance of this Order, Yak shall file its revised tariff and an accompanying price list within thirty (30) days of receipt of this Order. The revised tariff shall be consistent with the findings of this Order and shall be consistent with the Commission's Rules and Regulations.

6. Yak is subject to access charges pursuant to Commission Order No. 86-584, in which the Commission determined that for access purposes resellers and facilities-based interexchange carriers should be treated similarly.

7. With regard to the Company's resale of service, an end-user should be able to access another interexchange carrier or operator service provider if the end-user so desires.

8. Yak shall resell the services of only those interexchange carriers or LECs authorized to do business in South Carolina by this Commission. If Yak changes underlying carriers, it shall notify the Commission in writing.

9. With regard to the origination and termination of toll calls within the same LATA, Yak shall comply with the terms of Order No. 93-462, Order Approving Stipulation and Agreement, in Docket Nos. 92-182-C, 92-183-C, and 92-200-C (June 3, 1993), with the exception of the 10-XXX intraLATA dialing requirement, which has been rendered obsolete by the toll dialing parity rules established by the FCC pursuant to the Telecommunications Act of 1996 (See, 47 CFR 51.209). Specifically, Yak shall comply with the imputation standard as adopted by Order No. 93-462 and more fully described in paragraph 4 of the Stipulation and Appendix B approved by Order No. 93-462.

10. Yak shall file annual financial information in the form of annual reports and gross receipts reports as required by the Commission. Both the annual report and the gross receipt report will necessitate the filing of intrastate information. Therefore, Yak shall keep financial records on an intrastate basis for South Carolina in order to comply with the Commission's requirements of filing an annual report and a gross receipts report. The proper form for filing annual financial information for the annual report may be found at the Commission's website at www.psc.state.sc.us/forms. The title of this form is "Annual Information on South Carolina Operations for Interexchange Companies and AOS," and the proper form may be found under the appropriate link for "Annual Report." Yak shall file its annual report by April 1st of each year. Commission gross receipts forms are due to be filed with the Commission no later than August 31st of each year. The appropriate form for remitting information for gross receipts is entitled "Gross Receipts Form for Utility Companies" and may be found on the Commission's website at www.psc.state.sc.us/forms.

11. The Company shall, in compliance with Commission regulations, designate and maintain an authorized utility representative who is prepared to discuss, on a regulatory level, customer relations (complaint) matters, engineering operations, tests and repairs. In addition, the Company shall provide to the Commission in writing the name of the authorized representative to be contacted in connection with general management duties as well as emergencies which occur during non-office hours. Yak shall file the names, addresses and telephone numbers of these representatives with the Commission within thirty (30) days of receipt of this Order. The "Authorized Utility

Representative Information” form can be found at the Commission’s website at www.psc.state.sc.us/forms; this form shall be utilized for the provision of this information to the Commission. Further, the Company shall promptly notify the Commission in writing if the representatives are replaced.

12. The Company is directed to comply with all Rules and Regulations of the Commission, unless a regulation is specifically waived by the Commission.

13. At the hearing, Yak requested a waiver of Reg. 103-610, which requires that records required by the Commission’s Rules and Regulations be maintained in South Carolina. The record reveals that Yak’s principal headquarters will be located in Ontario, and the Company requests permission to maintain its books and records at its headquarters in Ontario. The Commission finds Yak’s requested waiver reasonable and understands the difficulty presented to Yak should the waiver not be granted. The Commission therefore grants the requested waiver that Yak be allowed to maintain its books and records at its principal headquarters. However, Yak shall make available its books and records at all reasonable times upon request by the Commission or the Commission Staff, and Yak shall promptly notify the Commission if the location of its books and records changes.

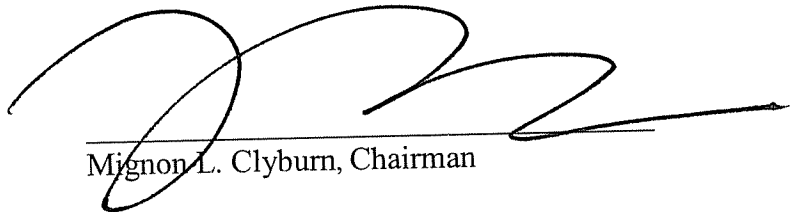
14. Yak also requests that it be exempt from record keeping policies that require a carrier to maintain its financial records in conformance with the Uniform System of Accounts (USOA). The USOA was developed by the FCC as a means of regulating telecommunications companies subject to rate base regulation. As a competitive carrier, Yak maintains its book of accounts in accordance with Generally

Accepted Accounting Principles (GAAP). GAAP is used extensively by interexchange carriers. Moreover, Yak asserts that because it utilizes GAAP, the Commission will have a reliable means by which to evaluate Yak's operations and assess its financial fitness. Accordingly, Yak hereby requests an exemption from the USOA requirements. We grant the Company's request for the reasons stated above.

15. Each telecommunications company certified in South Carolina is required to file annually the Intrastate Universal Service Fund (USF) worksheet. This worksheet provides the Commission Staff information required to determine each telecommunications company's liability to the State USF fund. The Intrastate USF worksheet is due to be filed annually no later than August 15th.

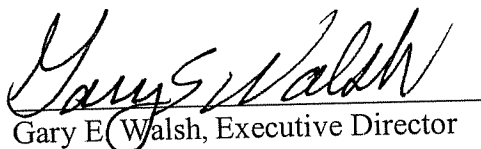
16. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:



Mignon L. Clyburn, Chairman

ATTEST:



Gary E. Walsh, Executive Director

(SEAL)